Supreme Court, U.S.
FILED

No. 031205 FEB 19 2004

IN THE SUPREME COURT OF THE UNITED STATES

MONTGOMERY BLAIR SIBLEY

Petitioner,

vs.

HARRY LEE ANSTEAD, in his capacity as Chief Judge of and representative of the Florida Supreme Court; ALAN R. SCHWARTZ, in his capacity as Chief Judge of and representative of the Florida Third District Court of Appeal; MAXINE COHEN LANDO, in her capacity as a Judge of the Circuit Court of the 11th Judicial Circuit in And For Miami- Dade County, Florida,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

Petition for Writ of Certiorari

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the Eleventh Circuit's expansion of the *Rooker-Feldman* Doctrine contradicts this Court's holding in *Feldman* and results in a trespass upon the Fourteenth Amendment and 28 U.S.C. §1983 (i) mandating that this Court decide an important question of federal law that has not been, but should be, settled by this Court, and (ii) has decided an important federal question in a way that conflicts with relevant decisions of this Court and other circuit courts of appeals.

2. Whether the dismissal *sua sponte* without leave to amend Petitioner's 28 U.S.C. §1983 complaint for declaratory relief by the District Court and the refusal of the Eleventh Circuit Court of Appeals to allow to Petitioner even a single opportunity to amend the complaint (i) so far departed from the accepted and usual course of judicial proceedings and/or sanctioned such a departure by a lower court as to call for an exercise of this Court's supervisory power and (ii) decided an important federal question in a way that conflicts with relevant decisions of this Court.

3. Whether the "Do Not Publish" Rule of the Eleventh Circuit conflicts with the holding of the United States Court of Appeals for the Eight Circuit that such a rule is inconsistent with the doctrine of *Stare Decisis* and as such departs from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power and raises an important question of federal law that has not been, but should be, settled by this Court.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

Petitioner Montgomery Blair Sibley, through undersigned counsel, prays that a writ of certiorari issue to review the judgment and opinion of the Court of Appeals for the Eleventh Circuit entered October 23, 2003.

OPINIONS BELOW

The May 13, 2003, opinion of the United States District Court for the Southern District of Florida is reprinted in the appendix hereto, Appendix-2, *infra*. The October 23, 2003, "Do Not Publish" opinion of the Court of Appeals for the Eleventh Circuit is reprinted in the appendix hereto, Appendix-8, *infra*. The November 28, 2003, decision of the Court of Appeals for the Eleventh Circuit denying rehearing is reprinted in the appendix hereto, Appendix-13, *infra*.

JURISDICTION

The judgment of the Court of Appeals for the Eleventh Circuit was entered on October 23, 2003. A timely filed motion for rehearing was denied on November 28, 2003. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES AND REGULATIONS INVOLVED

(Set-out in Appendix)

U.S. Constitution, 14th Amendment, Section 1

U.S. Constitution, 14th Amendment, Section 5:

28 U.S.C. §1653

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42 U.S.C. §1983

Federal Rules of Civil Procedure, Rule 15(a)

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STATEMENT OF THE CASE

Procedural History

On May 13, 2003, Petitioner filed his complaint seeking declaratory relief pursuant to 42 U.S.C. §1983 with the U. S. District Court for the Southern District of Florida. On May 19, 2003, the same day the returns of service on the Respondents were filed with the clerk, the district court *sua sponte* entered its "Order Dismissing Complaint for Declaratory and Injunctive Relief for Lack of Subject-Matter Jurisdiction Pursuant to Federal Rule of Civil Procedure 12(h)(3)" holding that "it lacked subject matter jurisdiction due to the availability of an adequate remedy at law." Appendix-9, *infra*. Noteworthy is that this order was entered prior to the appearance by any of the Respondents and without affording to Petitioner either an opportunity to file a memorandum of law to address the basis upon which the district court dismissed the lawsuit or amend his complaint.

On October 23, 2003, the Court of Appeals for the Eleventh Circuit issued its "Do Not Publish" opinion affirming the District Court's dismissal not for the "availability of an

adequate remedy at law" as the District Court had held. Instead, implicitly invoking the "right for the wrong reason" rule – and ignoring Petitioner's request for leave to amend the complaint to address any pleading deficiencies – the Eleventh Circuit held that the *Rooker-Feldman* doctrine denied jurisdiction to the District Court and thus dismissal was proper for lack of subject matter jurisdiction. Appendix-9, *infra*.

This timely petition follows the Eleventh Circuit's denial of Petitioner's motion for rehearing entered on November 28, 2003, in which Petitioner specifically requested leave to amend the complaint to address the Eleventh Circuit's finding of no subject matter jurisdiction.

Substantive Allegations of the Complaint

Factual Allegations - Petitioner's complaint for declaratory relief filed in the district court arose as a result of (i) the systematic *de facto* and subsequent *de jure* termination of all Petitioner's rights in his minor children by the Florida Court System and Petitioner's attempts to have those *fundamental* human rights recognized and respected by the Florida court

system and (ii) the senseless child support obligations placed upon Petitioner which rendered him impecunious and unable to support himself or his minor child from a second marriage as required by, among other authorities, his Maryland divorce decree governing his second marriage.

As to the first ground, the complaint for declaratory relief alleged that: in September 1994, Petitioner, Montgomery Blair Sibley, and Barbara Sibley were divorced in the State of Florida. Petitioner was given custody of the three children of that marriage and after the division of property neither paid nor received child support or alimony. From 1994 to September 2000, Petitioner, while living in Florida, was the "primary residential custodian" of the three children, and at all times was a nurturing father against whom no complaint was raised.

In 1996, Petitioner re-married and had a child of that second marriage born in December 1997. In the spring of 2000, pursuant to the 1994 Marital Settlement Agreement and the subsequent order of the Florida Family Court, Petitioner provided notice to his former wife of his intent to relocate to

Maryland with the minor children due to the depressed economics in the State of Florida.

In flagrant disregard of his rights and in violation of the relevant court orders, Petitioner's former wife refused to return the children to him at the conclusion of their summer of 2000 vacation. Instead, the former wife moved for a change in custody in the Florida Family Court on July 27, 2000. For the next two years Petitioner was denied access to his minor children of his first marriage by the Florida Family Court while the determination of that motion was repeatedly adjourned.

Finally, on August 5, 2002, the two-year-old motion to change custody was finally determined by the Florida Family Court, which refused to enforce Petitioner's rights in his minor children and terminated all of Petitioner's parental rights in his children.

As to the second point, the complaint for declaratory relief alleged that: notwithstanding Petitioner's judicially-recognized economic condition ($36,000/year gross income; negative net worth) and that of his former wife ($250,000/year

gross income; $1,000,000+ net worth) – the Florida Family Court ordered that Petitioner pay to his former wife $100,000 in arrearages of child support calculated at $4,000 per month from July 2000, $4,000/month going forward plus tuition to private schools and college for the three children in the amount of $175,000 for a total of $275,000.

During this time, as alleged in the complaint for declaratory relief, Petitioner filed, in an effort to secure his rights in his children and reverse the absurd child support obligations (i) twelve petitions for writs of prohibition, mandamus and/or certiorari to the Florida Third District Court of Appeals and/or the Florida Supreme Court, (ii) five direct appeals to the Florida Third District Court of Appeals and/or the Florida Supreme Court, and (iii) three Habeas Corpus petitions to the Florida Third District Court of Appeals and/or the Florida Supreme Court.

Legal Allegations - The complaint for declaratory relief alleges that the Florida Court System (i) impermissibly and irrationally discriminated against both him and persons similarly

situated to Petitioner in violation of equal protection of the laws by refusing to him the same results as factually and legal similarly situated litigants obtained in each of the 26 different counts concerning legal proceedings detailed in the complaint for declaratory relief and (ii) by repeatedly treating other similarly situated litigants in specifically cited past cases differently than Petitioner, the Florida Court System acted unreasonably and discriminatorily in refusing to apply the same rule of law to Petitioner. As a result, Petitioner was denied the equal protection of the laws and was deprived of his fundamental rights as a parent and his property without due process of law in violation of the Fourteenth Amendment.[1]

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[1] Subsequent to the instant complaint, Petitioner has filed four more suits in the U.S. District Court for the Southern District of Florida: (i)*Sibley v. Lando* - presently pending in the 11th Circuit and assigned Case Number: 03-13340-G in which Petitioner sought a Declaratory Judgment that Judge Lando's order prohibiting upon pain of contempt Petitioner from seeking relief in Federal Court was unconstitutional, (ii) *Sibley v. Lando* - presently pending in the 11th Circuit and assigned Case No.: 03-14910-B brought by Petitioner under diversity jurisdiction seeking damages personally against Judge Lando for her unlawful imprisonment of Petitioner after she had been removed as a matter of Florida law from jurisdiction over Petitioner's

REASONS FOR GRANTING THE WRIT

The reason for granting this writ is that (i) Petitioner has alleged §1983 violations against the Florida Court system which substantive allegations must be accorded an opportunity to be heard if there is to be life to the protections of the Fourteenth Amendment, (ii) Petitioner was denied access to the federal court's by the denial to him leave to amend his complaint, (iii)

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case, (iii) *Sibley vs. Lando* - presently pending in the 11th Circuit and assigned Case No.: 03-14915-G brought by Petitioner on behalf of his minor son from his second marriage seeking declaratory relief that children of second marriages's Equal Protection rights are violated by Florida's statutory and decisional case law which prohibits the needs of children of second marriage from being considered in setting or modifying child support obligations to the children of first marriages and (iv) *Sibley v. Spears*, presently pending in the Southern District of Florida and assigned Case: 03-22106-CIV-Jordan seeking *Habeas Corpus* relief from such incarceration upon the basis that Petitioner does not have the "key to his cell" as that key – according to the Florida Courts – is solely his ability to "command, simply by asking, the payment of the purge amount through his very wealthy father – who has in effect given many hundreds of thousands of dollars to Mr. Sibley for any and every purpose except the discharge of this particular obligation" *Sibley v. Sibley*, 833 So.2d 847 (Fla. 3rd DCA 2002)(footnote omitted).

Additionally, Petitioner has brought his matters to this Court before in Case Numbers: 00-1921, 03-370 and 03-682.

the "Do Not Publish" rule of the Eleventh Circuit vitiates *stare decisis*.

I. The Eleventh Circuit's Expansion of the *Rooker-Feldman* Doctrine has decided an important question of federal law that has not been, but should be, settled by this Court, and has decided an important federal question in a way that conflicts with relevant decisions of this Court

Affirming the District Court's dismissal under the "right for the wrong reason" doctrine, the Eleventh Circuit held that "All of the state court decisions disputed by Sibley could be appealed to the Florida Supreme Court, and then to the United States Supreme Court. Because it is clear that the *Rooker-Feldman* doctrine forbids Sibley from bringing the current case, we affirm the district court's dismissal of Sibley's complaint." Appendix-11 *infra*.

Such a holding by the Eleventh Circuit ignores as apparently inconvenient that the complaint did **not dispute** the decisions of the state court – and wrongly concluded that they could be appealed to the Florida Supreme Court – but instead the complaint sought a declaration that the process of

Florida State Courts in determining child custody and support matters violated constitutional guarantees. Indeed, the first paragraphs of the 67 page complaint which encompassed 27 counts for declaratory relief stated:

> Plaintiff brings this lawsuit against the judicial system of the State of Florida as represented by judges at the trial, appellate and supreme courts. This action seeks declarations from this Court that Plaintiff's rights as secured by the federal and Florida constitutions have been violated by the practice of these courts: (a) Denying hearings to Plaintiff he is entitled to have; (b) Delaying those hearings when and if ultimately held until justice is denied to Plaintiff; and (c) Deciding issues through use of *per curiam* decisions without opinions in a manner that creates two separate bodies of law in Florida: **First, the logically consistent and defensible body of law arising from written opinions and based upon the constitutionally-mandated doctrine of precedent; and Second, a shadow body of law logically inconsistent and indefensible with no allegiance to the doctrine of precedent.** Plaintiff has been regularly and systematically subjected to this shadow body of law in a manner that was discriminatory, arbitrary, and oppressive.

Such a distinction as Petitioner raised in the complaint was recognized by the Seventh Circuit in *Brokaw v. Weaver,* 305 F.3d

660, 666 (7th Cir. 2002) where the court held:

> However, "the fact that the plaintiff's pursuit of [her] federal claims could ultimately show that the state court judgment was erroneous [does] not automatically make *Rooker-Feldman* applicable." *Long*, 182 F.3d at 555-56. Rather, the appropriate question is whether "the federal plaintiff [is] seeking to set aside a state court judgment, or does [s]he present some independent claim, albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party." *GASH Assoc. v. Village of Rosemont*, 995 F.2d 726, 728 (7th Cir. 1993).

Here, Petitioner's claim was analogous to the claim in *Brokaw*: Petitioner sought not to set aside the state court judgments – they may have been correct – but rather Petitioner pursued an independent claim that the process utilized in obtaining those decisions violated due process and equal protection guarantees and hence the process must be corrected.

Thus, the ruling of the Eleventh Circuit expanded the *Rooker-Feldman* doctrine in a manner which (i) conflicts with this Court's holding in *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983) as detailed *supra* and the Seventh Circuit in *Brokaw v. Weaver* and (ii) *de facto* repealed the

Fourteenth Amendment.

A. The Complaint for Declaratory Relief Alleged A §1983 Claim Similar to That in *Feldman*, Hence *Rooker-Feldman* Authorized Subject Matter Jurisdiction in the District Court

In *District of Columbia Court of Appeals v. Feldman* this Court stated:

> The remaining allegations in the complaints, however, **involve a general attack on the constitutionality** of Rule 46 I(b)(3). See note 3, *supra*. . . . **The District Court, therefore, has subject matter jurisdiction over these elements of the respondents' complaints.** (Emphasis added).

Feldman at 487. Patently then, the *Rooker-Feldman* doctrine is not a bar to all §1983 claims against a state court system as the Eleventh Circuit has held below. Hence, if Petitioner's complaint alleged – or could have alleged if he was accorded an opportunity to amend – a claim similar to that alleged in *Feldman*, then the *Rooker-Feldman* doctrine could not be invoked to premise dismissal for lack of subject matter jurisdiction.

In *Feldman*, the allegations which this Court found did

vest subject matter jurisdiction in the district court read in pertinent part:

> In his complaint, Feldman specifically alleged that the District of Columbia Court of Appeals' refusal to admit him to the bar violated the Fifth Amendment in five respects. . . . Finally, Feldman alleged that because the District of Columbia Court of Appeals had repeatedly waived the rule in the past to permit admission to the bar of persons who had not graduated from approved law schools, **the court acted unreasonably and discriminatorily in refusing to consider his individual qualifications and both denied him the equal protection of the laws and deprived him of his liberty and property without due process of law.** App. 43. . . . In his prayer for relief, Feldman asked for **a declaration that Rule 46 I, "either on its face or as applied to plaintiff,"** ibid., violates the Fifth Amendment; . . . (Emphasis added).

Id. at 487, footnote number 3.

As in *Feldman*, Petitioner here is mounting a general attack – or if not crystal clear under the present allegations of the complaint, would by amendment if permitted – on the constitutionality of two rules of procedure and practice of the Florida State Courts which Petitioner alleges violated both constitutional guarantees of *stare decisis* under due process and

equal protection: First, the expressly reserved right of the appellate courts of Florida to issue opinions *per curiam* without decisions thus avoiding their obligations as required as part of the "fundamental component of *stare decisis* and the rule of law generally" to insure that similarly situated litigants are treated the same. *James B. Beam Distilling Co. v. Georgia*, 501 U.S. 529, 544 (1991). Second, the prohibition against Florida Supreme Court review of any decision rendered by the inferior Florida Appellate District Courts *per curiam* without written decision.

As to the First point, **67%** of the cases decided by the Florida Third District Court of Appeal are *per curiam* decisions without written opinion, while 33% are granted written opinions.[2] Hence, 67% of the matters appealed from the Florida trial courts are determined without assurance that equal protection has been afforded by the appellate court to the litigants, save for the implicit trust litigants are to have in their

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[2] Source: Analysis of opinions for October 2003 found at www.3dca.flcourts.org/opinion. Of 166 opinions rendered in that month, 112 were *per curiam* affirmed without written opinion and 54 were decided with written opinion.

judicial system.

Which or course necessarily raises again Juvenal's important question posed in his *Satires, VI. 347, circa 110 AD*: *Quis custodiet istos custodes*? Here, the Third District Court of Appeals wants no one guarding them, hence their unreviewable *per curiam* decisions without written opinion.

Indeed, notwithstanding that the Florida Courts appalling justify the failure to issue written decision as too much work holding that "the sheer volume of appeals, in and of itself, would seemingly indicate the impossibility of a written opinion on every affirmance", counsel is to believe that "each and every appeal receives the same degree of attention and that a *per curiam* affirmance without opinion is not an indication of any kind of lesser treatment." *Elliott v. Elliott*, 648 So. 2d 137, 138 (Fla. 4 DCA 1994).

Of course, when (i) the 26 counts of the declaratory complaint below demonstrate that indeed litigants getting written decision get different results on similar facts from those who are not blessed with a written decision, (ii) from a court in

which three of its justices – one by name – have been singled out for public reprimand for unethical behavior to litigants[3], such assurances fall far short of what equal protection guarantees.

Significancy, such a practice has been the subject of much concern and condemnation by some of the Florida bench and bar. *See*: *The Florida Bar News* - July 1, 2000, "Judicial Management Council panel rejects the abolition of [per curiam affirmances]".

Finally, for the same reasons articulated in the problem with "Do Not Publish" decisions discussed *infra*, the abuse is even greater in the *per curiam* affirmance arena as there is not even the written opinion granted as in the federal system to insure intellectual fidelity to the points raised on appeal and the requirements of *stare decisis*. Significantly, the complaint below details in a *prima facia* manner that there is a difference in treatment and thus a violation of equal protection for Petitioner – and others similarly situation – in the results determined *per*

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3 *Inquiry Concerning a Judge Re: Alan R. Schwartz*, 755 So.2d 110 (Fla. 2000).

curiam without written decision than those for whom a written decision is issued.

As to the Second rule, in *Jenkins v. State*, 385 So.2d 1356, 1359 (Fla. 1980), the Florida Supreme Court held, "Accordingly, we hold that from and after April 1, 1980, the Supreme Court of Florida lacks jurisdiction to review *per curiam* decisions of the several district courts of appeal of this state rendered without opinion, regardless of whether they are accompanied by a dissenting or concurring opinion, when the basis for such review is an alleged conflict of that decision with a decision of another district court of appeal or of the Supreme Court."

Thus, Florida Supreme Court review of trial and inferior appellate decisions is only accorded those for whom a written opinion is issued. Hence, violation of equal protection are buried in the District Court of Appeals *per curiam* with no written opinion decisions never to see the light of day.

This rule of procedure is a violation of equal protection as it creates a separate and conflicting body of law for those who

do not get a written opinion thus prohibiting Florida Supreme Court review to insure compliance with equal protection guarantees.

B. *Rooker-Feldman* Cannot Trespass Upon the Fourteenth Amendment and 42 U.S.C. §1983

The Fourteen Amendment, §1 to the U.S. Constitution states in pertinent part: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." Section 5 of that amendment states, "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article." *Accord*: *Monroe v. Pape*, 365 U.S. 167, 171 (1976). Congress has specifically exercised its "power" by enacting 42 U.S.C. §1983, "Civil action for deprivation of rights", which states:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any

> State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, **except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.** (Emphasis added.)

The emphasized portion of §1983 is significant for understanding why the dismissal for lack of jurisdiction under the doctrine of *Rooker-Feldman* as determined by the Eleventh Circuit results in the *de facto* repeal of the Fourteenth Amendment and hence decides an important federal question which must be reviewed by this Court.

In enacting in 1996 the emphasized portion Congress intended to vest jurisdiction in the district court – and thus clearly curtail the expansion of *Rooker-Feldman* – to hear the exact sort of claim made by Petitioner in his complaint for declaratory relief. That intent was made clear in the Report by

the Senate Committee on the Judiciary on §311 of the Federal Courts Improvement Act of 1996, which amended §1983 as emphasized above:

> This section does not provide absolute immunity for judicial officers. Immunity is not granted for any conduct "clearly in excess" of a judge's jurisdiction, even if the act is taken in a judicial capacity. **Moreover, litigants may still seek declaratory relief, and may obtain injunctive relief if a declaratory decree is violated or is otherwise unavailable.**

Senate Report, 104-366, page 37. (Emphasis added). Without doubt, Congress in addressing this issue in the amendment of §1983 sought to insure the very procedure invoked by Petitioner: a declaratory judgment as a condition precedent to any injunctive action. That is all that Petitioner is sought here. Hence, the Eleventh Circuit's decision holding that the district court does not have jurisdiction pursuant to *Rooker-Feldman* simply guts what the Fourteenth Amendment and Congress so clearly have sought to do: secure that federal district courts stand ready to protect those rights guaranteed to citizens under the Constitution from state usurpation.

Thus to employ *Rooker-Feldman* to avoid that plainly placed jurisdiction and duty conflicts with the scheme Congress has so carefully laid out. As such a result is expressly prohibited by the Rules Enabling Act, 28 U.S.C §2072(b), which by its terms forbids the rules to "abridge, enlarge, or modify" any substantive right, *Rooker-Feldman* can't be extended as the Eleventh Circuit has in this case. As this Court noted in *Sibbach v. Wilson*, 312 U.S. 1 (1941), the federal courts, in adopting rules, were not free to extend or restrict the jurisdiction conferred by a statute. *Id.*, at 10.

Here, to employ *Rooker-Feldman* would abridge Petitioner's right to seek redress in the federal court and thus is prohibited by the Rules Enabling Act.

II. Petitioner Was Denied Due Process When His Complaint Was Dismissed *Sua Sponte* Without Opportunity to Amend and His Appeal Was Decided Under the "Right for the Wrong Reason" Doctrine Despite Petitioner's Request to Amend the Complaint

Notably, neither the District Court nor the Eleventh Circuit afforded to Petitioner an opportunity to amend his

complaint as required by statute, court rule and the express decisions of this Court.

At 28 U.S.C. § 1653 "Amendment of pleadings to show jurisdiction", Congress has specifically required of the judiciary that "Defective allegations of jurisdiction may be amended, upon terms, in the trial or appellate courts." This statute is given life by Federal Rules of Civil Procedure, Rule 15(a) which requires that leave to amend "shall be freely given when justice so requires". Though sought by Petitioner, neither the District Court nor the Eleventh Circuit afforded to Petitioner this basic right. *Accord: Foman v. Davis,* 371 U.S. 178, 182 (1962)("Of course, the grant or denial of an opportunity to amend is within the discretion of the District Court, but outright refusal to grant the leave without any justifying reason appearing for the denial is not an exercise of discretion; it is merely abuse of that discretion and inconsistent with the spirit of the Federal Rules."); *Conley v. Gibson,* 355 U.S. 41, 48 (1957)("The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome

and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits.")

Indeed, the very same Eleventh Circuit, in *Bank v. Pitt*, 928 F.2d 1108, 1112 (11th Cir. 1991), held "If our precedent leaves any doubt regarding the rule to be applied in this circuit, we now dispel that doubt by restating the rule. Where a more carefully drafted complaint might state a claim, a plaintiff must be given at least one chance to amend the complaint before the district court dismisses the action with prejudice."

Nonetheless, ignoring § 1653, Rule 15, this Court's above-cited holdings, its own holding in *Bank v. Pitt* and Petitioner's specific request to amend the complaint to cure any subject matter jurisdictional pleading defects in both his appellate briefs and motion for rehearing, the Eleventh Circuit affirmed the *sua sponte* dismissal by the District Court, albeit upon different grounds. Hence, Petitioner was denied not once, but twice, his plainly stated right to amend his complaint to address the alleged jurisdictional deficiencies.

Accordingly, certiorari review under Rule 10(a) is

appropriate as the United States Court of Appeal for the Eleventh Circuit has entered a decision (i) which has so far departed from the accepted and usual course of judicial proceedings and/or sanctioned such a departure by a lower court in its refusal to allow Petitioner to amend his complaint, as to call for an exercise of this Court's supervisory power and (ii) has decided an important federal question in a way that conflicts with relevant decisions as cited *supra* of this Court. Accordingly, this petition for a writ of certiorari should be granted to remedy this denial of due process and equal protection to Petitioner.

III. The "Do Not Publish" Decision of the Eleventh Circuit Conflicts with the Holding of the United States Court of Appeal for the Eight Circuit, Calls for an Exercise of this Court's Supervisory Power and Raises an Important Question of Federal Law That Has Not Been, but Should Be, Settled by this Court

Invoking Eleventh Circuit Rule 36-2, the Eleventh Circuit's opinion in this matter was ordered as "Do Not Publish". Appendix-8 *infra*. Rule 36-2 states "An opinion shall be

unpublished unless a majority of the panel decides to publish it. Unpublished opinions are not considered binding precedent. They may be cited as persuasive authority, provided that a copy of the unpublished opinion is attached to or incorporated within the brief, petition, motion or response in which such a citation is made."

Rule 36-2 and it use in this matter, (i) conflicts with the holding of the United States Court of Appeal for the Eighth Circuit, (ii) departs from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power and (iii) raises an important question of federal law that has not been, but should be, settled by this Court.

In *Marbury v. Madison*, 5 U.S. 137 (1803) this Court recognized that inherent in every judicial decision was a declaration and interpretation of the relevant general principles of law. "It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that

rule." *Id.* at 177.

Fundamental to this decision making process was that the enunciated law be subsequently applied to subsequently similarly situated litigants. *James B. Beam Distilling Co. v. Georgia*, 501 U.S. 529 (1991). "But selective prospectivity also breaches the principle that litigants in similar situations should be treated the same, a fundamental component of *stare decisis* and the rule of law generally." *Id.* at 544.

Indeed, this principle of reliance upon enunciated precedent is at the backbone of our legal system. As most eloquently stated by Justice Joseph Story, *Commentaries on the Constitution of the United States* §377-78 (1983): "A more alarming doctrine could not be promulgated by any American court, than that it was at liberty to disregard all former rules and decisions, and to decide for itself, without reference to the settled course of antecedent principles."

Here, the use of "Do Not Publish" is the very "alarming doctrine" of which Justice Story speaks. By designating the opinion below "Do Not Publish", the Eleventh Circuit has

permitted itself the ability (i) to ignore its relevant prior "Do Not Publish" opinions in deciding this matter and (ii) ignore this opinion when a similarly situated matter occurs in the future. Plainly, such power violates the "fundamental component of *stare decisis* and the rule of law generally." *James B. Beam Distilling Co.* at 544.

In *Anastasoff v. United States*, 223 F.3d 898 (8th Cir. 2000), *vacated,* 235 F.3d 1054 (8th Cir. 2000) (en banc)[4], the court in addressing the constitutionality of its Rule 28A(i) – similar in effect to the Eleventh Circuit's Rule 36-2 – held:

> Federal courts, in adopting rules, are not free to extend the judicial power of the United States described in Article III of the Constitution. *Willy v. Coastal Corp.*, 503 U.S. 131, 135 (1992). The judicial power of the United States is limited by the doctrine of precedent. Rule 28A(i) allows courts to ignore this limit. If we mark an opinion as unpublished, Rule 28A(i) provides that is not precedent. . . . Rule 28A(i) expands the judicial power beyond the limits set by Article III by allowing us complete discretion to determine which judicial decisions will bind us and which

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[4] The vacation *en banc* in *Anastasoff* is based upon the contested issue becoming moot, not upon a retreat from the holding contained in the original panel decision.

> will not. **Insofar as it limits the precedential effect of our prior decisions, the Rule is therefore unconstitutional.** (Emphasis added).

Id. at 905. More recently, in *Williams v. Dallas Area Rapid Transit*, 256 F.3d 260 (5th Cir. 2001), three judges of the Fifth Circuit dissented from a denial of a petition for rehearing *en banc* based upon grounds that Fifth Circuit Rule 47.5.4 – an analog to Eleventh Circuit Rule 36-2 – was unjustified, raised important questions involving equal protection and warranted full consideration by the Fifth Circuit *en banc*.

Accordingly, certiorari review under Rule 10(a) is appropriate as Rule 36-2 of the United States Court of Appeal for the Eleventh Circuit (i) conflicts with the holding of the United States Court of Appeals in *Anastasoff*, (ii) departs from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power and (iii) raises an important question of federal law that has not been, but should be, settled by this Court.

CONCLUSION

Accordingly, the petition for a writ of certiorari should be granted to remedy the dismissal of the complaint for declaratory relief in this deprivation of parental rights case.

Respectfully submitted,

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Constitutional Provisions, Treaties, Statutes, Ordinances and Regulations Involved

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 03-21199-CIV-LENARD/SIMONTON

MONTGOMERY BLAIR SIBLEY,

Plaintiff,

vs.

HARRY LEE ANSTEAD, ALAN R. SCHWARTZ, and MAXINE COHEN LANDO,

Defendants.
_____/

ORDER DISMISSING COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF FOR LACK OF SUBJECT-MATTER JURISDICTION PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(h)(3)

THIS CAUSE is before the Court *sua sponte*. On May 13, 2003, Plaintiff Montgomery Blair Sibley filed a Complaint for Declaratory and Injunctive Relief (D.E. 1) and a Verified Emergency Motion for Temporary Injunction (D.E. 2). Upon *a sua sponte* review of the Complaint, the Court finds as follows.

I. Introduction

This action stems from a child custody dispute between Plaintiff Sibley and his ex-wife in state court. (Complaint¶¶ 9-29.) As the Complaint illustrates, that dispute began in 1997, and has yet to be finally resolved. *Id.* Plaintiff has filed multiple suits in federal district court challenging the outcome of the state court proceedings and at least five of those actions were filed

against judicial state actors.[1] In three of those cases, the district court dismissed Plaintiff's Complaint for lack of subject matter jurisdiction or based on the *Younger* abstention doctrine and the Eleventh Circuit affirmed (the fourth and the instant cases are still pending).[2]

II. Analysis

Rule 12(h)(3) of the Federal Rules of Civil Procedure states, "[w]henever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action." The Eleventh Circuit has held that a federal court "not only had the power but also has the obligation at any time to inquire into jurisdiction whenever the possibility that jurisdiction does not exist arises." *Fitzgerald v. Seaboard System Railroad, Inc.*, et al., 760 F.2d 1249, 1251 (11th Cir. 1985).

The Eleventh Circuit has held that state court judges are not absolutely immune from claims for injunctive relief under §

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[1] The four earlier-filed cases include: *Sibley v. Gersten, et al.*, Case No. 00-3665-CIV-MORENO (dismissed for lack of subject matter jurisdiction); *Sibley v. Lando*, Case No. 012940-CIV-UNGARO-BENAGES (dismissed pursuant to Younger abstention doctrine); *Sibley v. Schwartz*, Case No. 01-3746-CV-KING (dismissed for lack of subject matter jurisdiction); *Sibley v. Lando*, Case No. 03-20942-CIV-HUCK (still pending).

[2] See *Sibley v. Gersten, et al.*, Case No. 00-15833 (11th Cir. 2001) (affirming Case No. 00-3665-CIV-MORENO); *Sibley v. Lando*, Case No. 01-15644 (11thCir. 2002) (affirming Case No. 01-2940-CIV-UNGARO-BENAGES); *Sibley v. Schwartz*, Case No. 01-16571 (11th Cir. 2002) (affirming Case No. 01-3746-CIV-KING).

1983, recognizing that "the requirements for obtaining injunctive relief `severely curtail the risk that judges will be harassed and their independence compromised by the threat of having to defend themselves against suits by disgruntled litigants.'" *Bolin v. Story*, 225 F.3)d 1234,1240 (11th Cir.2000) (quoting *Pulliam v. Allen*, 466 U.S. 522,537-38 (1984)). The same court explained that "[i]n order to receive declaratory or injunctive relief, plaintiffs must establish that there was a [constitutional] violation, that there is a serious risk of continuing irreparable injury if the relief is not granted, and the absence of an adequate remedy at law." *Id.* at 1242-43, see *Newman v. Alabama*, 683 F.2d 1312, 1319 (11th Cir. 1982).

In an unpublished opinion reviewing the district court's dismissal of one of Sibley's earlier actions, the Eleventh Circuit held that "the district court properly dismissed Sibley's 1983 claim for lack of jurisdiction because he failed to establish a violation of his constitutional rights." *Sibley v. Gersten, et al.*, Case No. 00-15833 at 8 (11th Cir. 2001) (affirming Case No. 00-3665-CIV-MORENO).[3] In that case, as in the instant case, Plaintiff filed a Complaint seeking declaratory and injunctive relief and invoking federal question jurisdiction based on claims made pursuant to 42 U.S.C. § 1983. *Id.* at 3; (Complaint ¶2). The Court held that the a written opinion explaining a state court decision in relation to prior precedent was not compelled by the Due Process Clause. *Id.* at 8.

In a subsequent unpublished opinion reviewing another district court dismissal of another of Sibley's earlier actions, the Eleventh Circuit again found that Sibley failed to demonstrate a constitutional violation. *Sibley v. Schwartz*, Case No.01-16571 at 3 (11thCir.2002)(affirming Case No. 01-3746-CIV-KING). In

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[3] In the Eleventh Circuit, unpublished opinions are not considered binding precedent, but may be cited as persuasive authority. Eleventh Circuit Rule 36-2.

addition, the Eleventh Circuit held in that case that there was an adequate remedy at law for the violations alleged in Sibley's Complaint, as he could appeal any rulings in his state court action to the Florida Supreme Court. *Id.*

In the instant Complaint, claims numbered one through twenty-six allege that the rulings of one or more of the judicial defendants:

> [V]iolated Plaintiffs rights under (i) Fifth and Fourteenth Amendments of the United States Constitution, (ii) Article 1, § 9 and 21 of the Florida Constitution, and (iii) Florida Rules of Civil Procedure, Rule 1.090(d) and (iv) the law enunciated by the Florida Supreme Court in St Mary's Hospital, Inc. v. Phillipe, 769 So.2d 961, 971 (Fla. 2000) and Palm Harbor Special Fire Control Dist. v. Kelly 516 So.2d 249, 251 (Fla. 1987) by treating Plaintiff differently than others similarly situated with no rational basis for the difference in treatment...

Id. ¶¶ 31, 36, 41, 46, 51, 56, 61, 66, 71, 76, 81, 86, 91, 96, 101, 106, 111, 116, 121, 126, 131, 136, 141, 146, 151, 156. Plaintiff relies on two Florida Supreme Court cases, which discuss the application of the Equal Protection Clause to federal and state statutory classifications. See *St Mares Hospital, Inc. v. Phillipe*, 769 So.2d 961,971 (Fla. 2000); *Palm Harbor Special Fire Control Dist. v. Kelly*, 516 So.2d 249, 251 (Fla. 1987). However, Plaintiff does not allege that he individually or as a member of a group has received unfair treatment under a federal or state statute. Instead, he claims that the judicial Defendants have treated him differently than other litigants in cases with "fact patterns similar to those alleged [by Plaintiff)." (Complaint ¶32, 37, 42, 47, 52, 57, 62, 67, 72, 77, 82, 87, 92, 97, 102, 107, 112, 117, 122, 127, 132, 137, 142, 147, 152, 157.) Plaintiff appears to be claiming that Defendants misapplied or unfairly applied prior legal

precedent in making their decisions in his cases. *See Id.* However, while "the Due Process Clause grants the aggrieved party the opportunity to present his case and have its merits fairly judged," *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 433 (1982), it does not include a guarantee that a plaintiff will always like the outcome or agree with a court's decision. Thus, Plaintiffs allegations do not rise to the level of constitutional violations.

The Court finds that Plaintiffs claims one through twenty-six fail to state a claim under § 1983 because they do not allege a cognizable constitutional violation. In addition, in the case of Plaintiff s claims against Defendants Schwartz and Lando, the Court finds that there is an adequate remedy at law for the alleged violations. Plaintiff may appeal those decisions to the Florida Third
Circuit Court of Appeal or to the Florida Supreme Court.

As to the final claim in the Complaint, claim twenty-seven, Plaintiff alleges that Defendant Lando violated his constitutional rights by refusing to return his passport to him. (Complaint ¶162.) On this count, the Court again finds that Plaintiff has an adequate remedy at law. He may appeal Defendant Lando's decision. Based on a review of the Complaint in this case, the Court finds that it lacks subject matter jurisdiction over Plaintiff s claims. Thus, pursuant to Rule 12(h)(3) of the Federal Rules of Civil Procedure the Court *sua sponte* dismisses Plaintiffs action. Accordingly, it is

ORDERED AND ADJUDGED that

1. The Complaint for Declaratory and Injunctive Relief (D.E.1), filed on May 13, 2003, by Plaintiff Montgomery Blair Sibley, is DISMISSED for lack of subject matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(h)(3).

2. The case is CLOSED.

3. All pending motions not ruled upon by separate order are DENIED AS MOOT.

DONE AND ORDERED in Chambers at Miami, Florida this 19 day of May, 2003.

JOAN A. LENARD

UNITED STATES DISTRICT JUDGE

cc: U.S. Magistrate Judge Andrea M. Simonton
All Counsel of Record

Case No. 03-21199-CIV-LENARD/SIMONTON

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 03-12824
Non-Argument Calendar

D. C. Docket No. 03-21199-CV-JAL

MONTGOMERY BLAIR SIBLEY,

Plaintiff-Petitioner,

versus

FLORIDA SUPREME COURT, Harry Lee Anstead, in his capacity as Chief Judge and representative, THIRD DISTRICT COURT OF APPEAL, Alan R. Schwartz, in his capacity as Chief Judge and representative, *et al.*,

Defendants-Respondents.

Appeal from the United States District Court for the Southern District of Florida
(October 23, 2003)

Before DUBINA, MARCUS, and WILSON, Circuit Judges.

PER CURIAM:

Montgomery Blair Sibley appeals *pro se* the district court's dismissal for lack of subject matter jurisdiction of his 42

U.S.C. §§ 1981, 1983, 1985(3)[1] and 1988 suit seeking declaratory relief against the Florida Supreme Court, Florida's Third District Court of Appeal, and the 11th Judicial Circuit Court in and For Miami-Dade County, Florida. Sibley has also identified Harry Lee Anstead, Alan R. Schwartz, and Maxine Cohen Lando in their capacities as judges of the courts. The district court found that it lacked subject matter jurisdiction due to the availability of an adequate remedy at law. Because we find that the *Rooker-Feldman* doctrine precludes Sibley's claims, we need not decide whether the district court was correct in finding that it lacked subject matter jurisdiction based on the existence of an adequate remedy at law.

Background and Discussion

After a number of adverse decisions rendered in various petitions, motions, and appeals related to disputes over a dissolution of marriage, Sibley filed an action in the district court seeking a declaratory judgment that the judicial system of the State of Florida violated his civil rights. In all, Sibley outlined in his complaint 27 separate claims for relief against three state judges, alleging that he was treated differently by state courts in Florida from others similarly situated, with no rational basis.

The district court found that Sibley's claims numbered 1 through 26 failed to state a claim under § 1983 because they failed to allege cognizable constitutional violations. The court also found that an adequate remedy at law existed for Sibley's claims against defendants Schwartz and Lando, because Sibley could appeal the disputed decisions to the Third District Court of Appeal or the Florida Supreme Court. Likewise, the district

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[1] On appeal, Sibley only discusses his § 1983 claim. We will therefore not consider his other claims. See *Greenbriar, Ltd. v. City of Alabaster*, 881 F.2d 1570, 1573 n.6 (11th Cir. 1989) (issues not argued on appeal are deemed abandoned).

court found that Sibley had an adequate remedy at law for claim 27 as to Lando, because the decision could be appealed. The court then *sua sponte* dismissed the suit pursuant to FED. R. Civ. P. 12(h)(3).

We review a district court's finding that it lacks subject matter jurisdiction de novo. *See Dale v. Moore*, 121 F.3d 624, 626 (11th Cir. 1997). It is well settled that a federal district court lacks jurisdiction to review, reverse, or invalidate a final state court decision. See *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 416 (1923); *D. C. Court of Appeals v. Feldman*, 460 U.S. 462, 476 (1983).

Under the *Rooker-Feldman* doctrine, the authority to review final decisions from the highest court of the state is reserved to the Supreme Court of the United States. See *Hollins v. Wessel*, 819 F.2d 1073, 1074 (11th Cir. 1987) (per curiam). Federal district courts may not exercise jurisdiction to decide federal issues which are inextricably intertwined with a state court's judgment. *See Blue Cross & Blue Shield of Maryland, Inc. v. Weiner*, 868 F.2d 1550, 1554 (11th Cir. 1989). A district court engages in impermissible appellate review when it entertains a claim that the litigants did not argue in the state court, but is inextricably intertwined with the state court judgment. *See Feldman*, 460 U.S. at 483 n.16. The *Rooker-Feldman* doctrine applies as long as the party had a reasonable opportunity to raise his federal claims in the state court proceedings. *See Wood v. Orange County*, 715 F.2d 1543, 1547 (11th Cir. 1983).

We need not recite all of Sibley's 27 claims here; in each of his claims, he alleges that either the courts or one of the individual judges violated his rights by treating him differently than others similarly situated. Most notably, in his reply brief, he clarifies that he seeks injunctive relief requiring that the state trial judge 1) grant him a hearing; 2) rule upon pending motions; 3) not hold Sibley in contempt; and 4) not revoke his travel privileges. Such action by a federal district court would

amount to inappropriate review of state court decisions, particularly in light of the well settled principle that a plaintiff may not seek reversal of a state court judgment simply by casting his complaint in the form of a civil rights action. *See Sawyer v. Overton*, 595 F.2d 252, 252 (5th Cir. 1979) (per curiam).[2]

Further, Sibley had a reasonable opportunity to make any equal protection claims while litigating in the state court system. As brought in his federal suit, any such claims are "inextricably intertwined" with the state court proceedings, because such claims would only succeed to the extent that the state court wrongly decided the issues before it. *See Goodman v. Sipos*, 259 F.3d 1327, 1332 (11th Cir. 1997). All of the state court decisions disputed by Sibley could be appealed to the Florida Supreme Court, and then to the United States Supreme Court.

Because it is clear that the *Rooker-Feldman* doctrine forbids Sibley from bringing the current case, we affirm the district court's dismissal of Sibley's complaint.

Sanctions

The Third District Court of Appeal also seeks sanctions for Sibley's "ongoing filing of facially insufficient pleadings." The Federal Rules of Appellate Procedure provide that, following determination that an appeal is frivolous, we may, "after a separately filed motion or notice from the court and reasonable opportunity to respond, award just damages or single or double

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[2] In *Bonner v. City of Pritchard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), we adopted as binding precedent all decisions of the former Fifth Circuit prior to the close of business on September 30, 1981.

costs to the Respondent." FED. R. APP. P. 38.

Respondent's "recommendation" for sanctions came only in a short paragraph at the end of the conclusion of its Answer Brief In the absence of a separate, duly filed motion for sanctions pursuant to Rule 38, we cannot consider Respondent's request.

AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No.: 03-12824-HH

MONTGOMERY BLAIR SIBLEY,

Plaintiff-Petitioner,

versus

FLORIDA SUPREME COURT,
Harry Lee Anstead, in his capacity
as Chief Judge and representative,
THIRD DISTRICT COURT OF APPEAL,
Alan R. Schwartz, in his capacity
as Chief Judge and representative,
11TH JUDICIAL CIRCUIT COURT IN AND
FOR MIAMI-DADE COUNTY, FLORIDA,
Maxine Cohen Lando, in her capacity
as a Judge,

Defendants-Respondents.

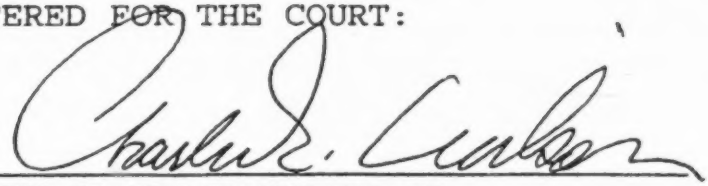
On Appeal from the United States District Court for the Southern District of Florida

BEFORE: DUBINA, MARCUS and WILSON, Circuit Judges.

PER CURIAM:

The petition(s) for rehearing filed by MONTGOMERY BLAIR SIBLEY is DENIED.

ENTERED FOR THE COURT:



UNITED STATES CIRCUIT JUDGE

Filed: U.S. Court of Appeals, Eleventh Circuit
November 28, 2003
Thomas K. Kahn, Clerk

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES AND REGULATIONS INVOLVED

U.S. Constitution, Fourteenth Amendment, Section 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Constitution, Fourteenth Amendment, Section 5:

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

28 U.S.C. §1653:

Defective allegations of jurisdiction may be amended, upon terms, in the trial or appellate courts.

28 U.S.C §2072(b):

Such rules shall not abridge, enlarge or modify any substantive

right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

42 U.S.C. §1983:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Federal Rules of Civil Procedure, Rule 15(a):

Amendments - A party may amend the party's pleading once as

a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

Eleventh Circuit Rule 36-2:

An opinion shall be unpublished unless a majority of the panel decides to publish it. Unpublished opinions are not considered binding precedent. They may be cited as persuasive authority, provided that a copy of the unpublished opinion is attached to or incorporated within the brief, petition, motion or response in which such a citation is made.